

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
SEPTEMBER 2, 2014**

**CALL TO
ORDER
6:01 pm**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Board members present were Gina Klempel, Ole Netteberg, Mark Hash, Cal Dyck and Roger Noble. Eric Mack, Alex Hogle and BJ Grieve represented the Flathead County Planning & Zoning Office.

There were 11 people in the audience.

**APPROVAL OF
MINUTES
6:01 pm**

Klempel motioned and Noble seconded to approve the July 1, 2014 minutes. The motion passed unanimously.

**PUBLIC
COMMENT
(not related to
agenda items)**

None.

**KALISPELL
SEVENTH DAY
ADVENTIST
(FCU-14-05)
6:01 pm**

A request by Kalispell Seventh-Day Adventists, for a Conditional Use Permit to establish a 'Church and other place of worship' and a radio tower on a vacant tract. The property is zoned 'AG-80 WVO Agricultural West Valley Overlay' and located at the northeast corner of Old Reserve Drive and West Springcreek Road north of Kalispell, MT. The property is approximately 19.5 acres in size within the Westside Zoning District.

Noble recused himself from hearing the application.

STAFF REPORT

Mack reviewed Staff Report FCU-14-05 for the Board.

**BOARD
QUESTIONS**

None.

**APPLICANT
PRESENTATION**

Erica Wirtila, Sands Surveying, represented the applicant. She summarized who was in attendance in the audience connected with the application and who was available as technical representatives to answer questions on the application. The sale of the property in the application to the applicant was contingent on the approval of the Conditional Use Permit (CUP). She summarized the application which included the use of the property for the building and parking lot and the possible use of the property not used by the building and parking lot for

agricultural purposes. She also discussed signage, access points for the property, plans for a secondary access and the days of use for the church. The applicant expected 101 trips per church service during off peak hours. She talked about the purpose of the radio tower which was to stream their services and the lighting which was motion sensing or downward shielded. The Department Of Transportation suggested the applicant set back an additional ten feet for the future expansion of West Reserve Drive. She addressed the concerns of the West Valley Land Use Advisory Committee of the use of agriculturally zoned land for agricultural purposes and the remedies for the concerns.

**BOARD
QUESTIONS**

None.

**PUBLIC
COMMENT**

None.

**STAFF
REBUTTAL**

None.

**BOARD
DISCUSSION**

Klempel asked Andy Hyde from Carver Engineering to show the stormwater drainage plan for the application.

Hyde explained in depth the drainage plan for the board.

**MAIN MOTION
TO ADOPT
F.O.F.
(FCU-14-05)**

Netteberg made a motion seconded by Klempel to adopt staff report FCU-14-05 as findings-of-fact.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
ADOPT F.O.F.
(FCU-14-05)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO APPROVE
(FCU-14-05)**

Netteberg made a motion seconded by Klempel to approve FCU-14-05.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
APPROVE
(FCU-14-05)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Noble rejoined the board.

**ERIC AND
MARCIA
REIMERS
(FZV-14-01)
(6:20 pm)**

A request by Eric & Marcia Reimers for a Zoning Variance to property within the Bigfork Zoning District zoned R-4 (Two-Family Residential). The applicant is requesting a variance to Section 3.12.040(3)(A), "Bulk and Dimensional Requirements", (front and rear setbacks for a principal structure), of the Flathead County Zoning Regulations. The property is located at 247 Beach Road.

STAFF REPORT

Mack reviewed FZV-14-01 for the board.

**BOARD
QUESTIONS**

Hash reviewed and clarified the Bigfork Land Use Advisory Committee's (BLUAC) role in the application process and asked Mack if anything had happened at the BLUAC meeting to suggest a change to the suggested findings of fact in the staff report.

Mack and Hash briefly discussed if there were any changes to the staff report's findings of fact.

**APPLICANT
PRESENTATION**

Ron Incoronato, represented the applicant. He spoke about his role in the project, the background of the property, the history of the application and the nature of the neighborhood. He explained the setbacks on the property, alternatives to the variance and if the alternatives were reasonable. He thought BLUAC had recognized the alternatives were not reasonable and that was why they had suggested to amended findings of fact for the application. The neighborhood was in favor of the project.

**BOARD
QUESTIONS**

Klempel asked when the original structure had been torn down.

Incoronato said demolition was this spring and elaborated on the timeframe and what had been done with landscaping.

Dyck asked how far the original house was from the road.

Incoronato said it was approximately 10 feet from the canal and about 10 to 15 feet from the street.

**PUBLIC
COMMENT**

None.

**STAFF
REBUTTAL**

Mack addressed the issues raised concerning the placement of the previous house. He did not believe the proposed garage was in the original footprint of the house and garage.

**BOARD
DISCUSSION**

Netteberg said he was in favor of the application because to deny it would deny the applicant the same rights enjoyed by the neighbors.

Dyck said he had visited the community. He said the variance would not change the community at all and with what had been done already, it was a benefit to the community.

Hash said variances like this application were difficult because all the criteria needed to be met to grant them. If the board wanted to grant the variance, then it needed to work on findings of fact number one and six so they supported the granting of the variance. Even though he would want to grant the variance because, in his mind, it was unfair because everyone else on the block was doing something and the applicant was unable to do the same thing, that did not get him over the hurdle of trying to get findings of fact one and six to support the variance.

Klempel and Incoronato discussed how the boundary line adjustment would affect the application or if it would affect the application and where the setback issues occurred.

Dyck said if the garage was a separate structure, the setback would be less. Having a separate garage made no sense for the property. This was where common sense had to come into play.

Incoronato said the reasonable alternative did not change the fact the existing structure was non-conforming as well. Even if they did do the alternative construction for the garage, it would still be non-conforming.

Klempel said the reason she asked is because she did not have a map of what the property would look like after the boundary line adjustment.

Hash said the question was, some of the members of the board felt finding of fact number one was not reasonable. To truly

make a finding of fact, it had to be shown why it was not reasonable. He asked if the planning staff had any options for the finding.

Hogle said it was a challenging topic for many reasons. To nail down what was or was not reasonable was subjective. The planning staff had to fall back on the rules every day with situations which arose from the public. One thing which was very clear concerning hardship, whether on the local level it was thought as reasonable or popular, it was not pertinent. The hardship could not be economic. Staff had to answer hard questions all the time from the public who make inquiries. It would be challenging to invent a way to show it was so unreasonable that you didn't need to pay attention to the criteria.

Hash said variances were supposed to be a release valve for the zoning regulations that seemed to be not appropriate for a given circumstance. He asked when the board had the criteria they had to look at so they could grant a release, was staff still saying the office could not recommend that the variance was reasonable.

Hogle said if the board was going to grant the variance, they would look at the prevailing precedence currently on the street with other homes, homes with built in garages on the footprints.

Noble felt the application would fall under what was considered a 'reasonable' request.

Dyck said when there was a subdivision put in place in the 1970's and then zoning placed on top of it in the 1990's, there had to be some latitude and how to work with it. The only way to get a lot size close to the minimum for zoning was with the boundary line adjustment which the applicant was in the process of. This was one of the unique situations where the rules were made for something after it was in existence and that was what made him look back at what was 'reasonable'. By today's regulations, this subdivision would have never been approved, but it was in existence.

Netteberg said this was a situation where the entire community was in support of the variance.

The board discussed process.

**MAIN MOTION
TO ADOPT
F.O.F.**

***Amend finding of
facts #1 and #6
(FZV-14-01)***

Noble made a motion seconded by Netteberg to amend findings of fact number 1 and 6 to read:

1. ~~Strict compliance with the regulations would not limit the reasonable use of property because the applicant would be allowed to build a second garage stall within the existing footprint and add a second story to the existing structure to capture lost interior floor space without a variance.~~
1. *Think that allowing this is consistent with a reasonable use of the property because one there is already a precedent for these deviations or variances, and two it is consistent with the neighborhood setting.*
6. ~~The alleged hardship appears to be economic because there are reasonable alternatives that exist for the subject property such as building a garage within the existing footprint of the structure and adding a second story, provided the alterations do not expand the footprint further into the setbacks.~~
6. *We find the hardship is not economic because the alternatives are not reasonable.*

And adopt staff report FZV-14-01 as findings-of-fact.

**BOARD
DISCUSSION**

Hash wanted to say he respected everything people were saying, but still felt a little uncomfortable with granting the variance. He was ok with granting the variance because the entire neighborhood was in violation of setbacks.

Noble agreed with Dyck concerning the zoning coming into place after the subdivision was in existence.

Hash said the board dealt with that issue all the time. He gave examples.

**ROLL CALL TO
ADOPT F.O.F.
(FZV-14-01)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

None.

MAIN MOTION TO APPROVE (FZV-14-01)	Noble made a motion seconded by Netteberg to approve FZV-14-01.
BOARD DISCUSSION	None.
ROLL CALL TO APPROVE (FZV-14-01)	On a roll call vote the motion passed unanimously.
JAMES AND NIKKEA WILLIAMSON (FZV-14-02) 6:56 pm	A request by James & Nikkea Williamson for a Zoning Variance to property within the Eastside Zoning District zoned AG-80 (Agricultural). The applicant is requesting a Variance to Section 3.04.040(1), "Minimum Lot Area", of the Flathead County Zoning Regulations. If granted, the requested Variance would allow the applicant to divide the existing non-conforming 10 acre tract into two 5 acre residential tracts. The property is located at 2109 Steel Bridge Road.
STAFF REPORT	Hogle reviewed FZV-14-02 for the board.
BOARD QUESTIONS	Noble and Hogle discussed if Hogle had been on the property and the location of a possible pond on the property.
APPLICANT PRESENTATION	James Williamson, 2109 Steel Bridge Rd, was the applicant. He reviewed the history of the application and the reason for the variance which was to partner with Fish, Wildlife and Parks (FWP) to help with reclamation of the land to the south. He had met with FWP and they were in favor of the variance. The property was unreasonable to farm due to topography. The property had been non-conforming since the zoning was initiated. The property was not in the floodplain, the neighbors were in favor of the variance and the zoning was in place to preserve and protect the property which was what they were trying to do with having SAG-5 and partnering with FWP to control the weeds.
BOARD QUESTIONS	Netteberg and Williamson discussed if the property would be salable and what the plans were for the property.
PUBLIC COMMENT	None.

**BOARD
DISCUSSION**

Netteberg said this application was different from the previous application.

Dyck agreed and was thankful for the clarification as to if one of the 5 acre parcels would be given to FWP.

Noble said it was good what the applicant was trying to achieve with partnering with FWP concerning the weed problems. Another option was to make a conservation easement on that section of the 10 acres which would obtain the same benefit. This application was different from the previous application and the findings of fact were less supportive of a granting of the variance.

Klempel said not a lot was fitting the criteria for a variance, yet she could sympathize with the applicant.

Hash agreed.

Netteberg hoped a real estate agent did not suggest obtaining a zoning variance to split the property.

Klempel said the realtor had no obligation to state to the buyer what the uses were and what could and could not be done with the property. Then the applicant had to come and jump through hoops. It needed to be stated in the regulations that realtors needed to supply that information.

Hash thought there was not a finding of fact which could be produced to fit the criteria. This situation was why the criteria were established. It was unfortunate for the applicant. The board historically had tried to make applications work if they could. He asked Hogle if he had any thoughts.

Hogle said sometimes it was helpful to understand the inner workings of the county. There was a potential, depending on the applicant's end goals, to do a boundary line adjustment (BLA) between his property and the FWP's property. He went on to explain when there was a boundary line adjustment on a property which was already non-conforming the adjustment did not need to make it conforming. He went on to explain options for the applicant concerning a boundary line adjustment with FWP.

Netteberg thought a BLA was a great idea.

Netteberg and Williamson discussed how much land around Williamson FWP owned.

**MAIN MOTION
TO ADOPT
F.O.F. AND
DENY
(FZV-14-02)**

Klempel made a motion seconded by Netteberg to adopt staff report FZV-14-02 as findings-of-fact and deny.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
ADOPT F.O.F.
AND DENY
(FZV-14-02)**

On a roll call vote the motion passed unanimously.

**OLD BUSINESS
7:25 pm**

None.

**NEW BUSINESS
7:25 pm**

Netteberg said it was difficult to go by the book concerning variances.

Hash said the board had tried to make things work for applicants. There had been cases where the board had not had the right criteria met. The planning office had improved the reports so he listened to the office concerning applications before them. They had to not take the law into their own hands because they thought it was right.

Klempel thanked Hash for pointing out BLUAC was an advisory board. They also could not just take into account whether the neighbors liked the application or not. The board had to go by what would work the best.

Hash commended staff on the report.

Hogle said he wished the applicant would have called after receiving the staff report and he could have suggested a BLA.

There was a brief discussion with Hogle and the board concerning how the weed problem came to be.

ADJOURNMENT The meeting was adjourned at approximately 7:29 pm. on a
7:29 pm motion by Dyck. The next meeting will be held at 6:00 p.m. on
October 1, 2014.

C. Mark Hash, Chairman

Donna Valade, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 10 / 7 / 14